SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

****

NO. 83-6610

****

MARGIE BULLARD BARFIELD,

Petitioner,

v.

KENNETH W. HARRIS, Superintendent,
North Carolina Correctional Center
for Women, and RUFUS L. EDMISTEN
State of North Carolina,

Respondents.

****

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

****

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OPINION BELOW

JURISDICTION

QUESTIONS PRESENTED

Pursuant to Rule 34 of the Rules of the Supreme Court, these items are omitted.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to the provisions cited by petitioner, the North Carolina statute criminalizing murder is NCGS §14-17 which, at the time petitioner was tried and convicted, read in part as follows:

> §14-17. Murder in the first and second degree defined; punishment. A murder which shall be perpetrated by means of poison, lying in wait,

imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon, shall be deemed murder in the first degree, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life as the court shall determine pursuant to GS §15A-2000.

STATEMENT OF THE CASE

Pursuant to Rule 34 of the Rules of the Supreme Court, this item is omitted.

ARGUMENTS IN RESPONSE TO THE REASONS ASSERTED FOR GRANTING THE WRIT

I

PETITIONER'S CLAIM OF A SANDSTROM VIOLATION IS SUBSTANTIVELY INCORRECT AND THEREFORE THE CRITERIA FOR SEEKING REVIEW ON WHICH SHE RELIES - FAILURE OF THE NORTH CAROLINA SUPREME COURT TO FOLLOW THIS HONORABLE COURT'S DECISIONS - IS INAPPLICABLE.

Petitioner first seeks a writ of certiorari on the grounds that there was a Sandstrom violation because (i) North Carolina's statute penalizing murder removes premeditation and deliberation as an issue if the jury finds the killing was perpetrated by poisoning, (ii) premeditation and deliberation are commonly understood as referring to a murder carried out with the intent to kill, and (iii) the jury therefore might have taken the trial judge's instruction that premeditation and

deliberation were deemed to exist as also meaning the different element of intent to kill was also deemed to exist. This does not provide a basis for issuing the writ.

First, this issue was waived under North Carolina law to respondents way of thinking, by not presenting it on direct appeal, although the District Court and the Court of Appeals held there was no waiver. While it is true that on post-conviction review the trial judge substantively reviewed this complaint, the Supreme Court denied certiorari to review the trial court decision without giving any reasons. In view of this, a finding of waiver would have been a correct application of law here and it should be presumed that this is what occurred, see e.g. Edwards v. Jones, 720 F.2d 751 (2nd Cir. 1983), Dobbert v. Strickland, 718 F.2d 1518 (11th Cir. 1983), Rollins v. Maggio, 711 F.2d 592 (5th Cir. 1983).

Second, no Sandstrom problem arises here. Petitioner concedes that Judge McKinnon instructed the jury that they were to find beyond a reasonable doubt that petitioner had the intent to kill and this concession is borne out by the instructions recited on page ten of the petition. Her basis for arguing that the jurors could have reasonably disregarded this express instruction and made the associations mentioned in (ii) above rests on the suppositions that the jurors knew other North Carolina case law which somewhat

mingles the concepts and knew complete dictionary definitions doing the same and from this knowledge elected to disregard the express instructions given them on this without even raising a question about it. This is no more likely to have happened here than in any other case in North Carolina in which these or other related concepts have been used. Hopefully, bare possibilities and presumptions of bad faith are not the stuff that constitutional violations are made of, for if they are, all of North Carolina's first and second degree murder convictions will go down the drain, as well as those of other jurisdictions using common law or common law-like definitions of criminal homicides. Parenthetically, just this term, the Court dismissed for want of a substantial question the case of Santiago v. Pennsylvania, _____ US _____, 78 LEd2d 72, 104 S.Ct. 52 (1983), a case challenging the related situation of felony murder being used as a substitute for malice. Presumably the same problem would have arisen in that case. For these reasons, then, a writ of certiorari should not be granted to petitioner.[1]

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[1]Petitioner spends four pages of text discussing harmless error vis a vis Connecticut v. Johnson, _____ US _____, 78 LEd2d 823, 103 S.Ct. 969 (1983), a first mention in this case. Respondents do not believe that it is necessary for the Court to reach petitioner's somewhat complicated analysis because there was no Sandstrom error in the first place. In passing, however, Judge Murnaghan noted during oral argument below that petitioner's story that she did not mean to kill her victim gets pretty old after five homicides.

II

PETITIONER'S CLAIM OF A LOCKETT VIOLATION IS SUBSTANTIVELY INCORRECT AND THEREFORE THE CRITERIA FOR SEEKING REVIEW ON WHICH SHE RELIES - FAILURE OF THE NORTH CAROLINA SUPREME COURT TO FOLLOW THIS HONORABLE COURT'S DECISIONS - IS INAPPLICABLE.

Petitioner next seeks a writ of certiorari on the ground that her death penalty was imposed under circumstances where the instructions may have permitted the jury to disregard mitigating circumstances. The basis for this argument is that the jury may have weighed the aggravating circumstances alone in determining whether they were substantial enough to justify the death penalty, rather than considering them as discounted by the effect of any mitigating circumstances. As petitioner notes, this issue is one which has concerned Mr. Justice Stevens at one point. Nevertheless it does not justify the issuance of a writ of certiorari.

First, the same waiver that occurred on the first issue occurred on this one. Second, as petitioner notes, there were no mitigating circumstances found - two express ones were submitted and expressly rejected by the jury while the omnibus "any other factor etc." was not answered one way or the other. Third, the Barclay and Zant cases[2] have largely answered the arguments posed here by holding that

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[2] _____ US _____, 77 LEd2d 1134, 103 S.Ct. 3418 (1983); _____ US _____, 77 LEd2d 235, 103 S.Ct. 2733 (1983).

the channeling of jury discretion on imposing the death penalty can be handled in several ways so long as the unbridled discretion found unconstitutional in Furman v. Georgia, 408 US 238,, 33 LEd2d 346, 92 S.Ct. 2726 (1972) is not present, which it is not here. Although, as petitioner notes, North Carolina has now opted for a discounting approach which, in her case, the jury may or may not have used under the instructions given them, even if it did not, the only reason petitioner offers why this would constitute cruel and unusual punishment is the use of a single word, "independent", in Lockett v. Ohio, 438 US 586, 57 LEd2d 973, 98 S.Ct. 2954 (1978). Lockett, however, dealt with a completely different question - the large-scale exclusion of articulable, relevant factors. This did not happen here and a sense of simple feeling leads to a correct result on petitioner's argument, showing as it does that there is simply nothing cruel and unusual about the analytical method petitioner says may have occurred here, assuming of course that the death penalty itself is not cruel and unusual, an issue long since decided in the negative. Finally, the concern expressed by Mr. Justice Stevens that the death penalty is only constitutional if the jury considers it the appropriate punishment no matter what, does not seem to be met by the choice of one of the systems above over the other. While in theory the discounting system might be more helpful to an accused in a given case, in petitioner's case this is speculative in the

extreme since, as noted before, no mitigating circumstances were ever found. Beyond this, however, it is hard to see how anything but a return to the pre-Furman discretion could ever wholly achieve the situation mentioned by Mr. Justice Stevens. For these reasons, a writ of certiorari should not be granted on this issue.

III

PETITIONER'S CLAIM OF A WITHERSPOON VIOLATION IS SUBSTANTIVELY INCORRECT AND THEREFORE THE CRITERIA FOR SEEKING REVIEW ON WHICH SHE RELIES - A CONFLICT BETWEEN THE CIRCUITS - IS INAPPLICABLE HERE.

Petitioner next seeks a writ of certiorari on the ground that prospective juror Dent was wrongly excluded under Witherspoon v. Illinois, 391 US 510, 20 LEd2d 776, 88 S.Ct. 1770 (1968). This Court has previously denied certiorari on this issue, Barfield v. North Carolina, 448 US 907, 65 LEd2d 1137, 100 S.Ct. 3050 (1980) and, of course, it has not found favor on collateral review in the federal courts either. On the assumption that what was good enough in the past is good enough now, especially since petitioner's current lawyer, Mr. Burr, was on the prior petition, respondents will attach and primarily rely on their prior response.

Supplementing the above however, petitioner's attempt to gain review by claiming a split in the Circuits on a test for the "I don't believe (think) I could" type of response fails because Judge Dupree relied on the Fifth and Eleventh Circuit and District Court law (App 99(a)).

Her attempt to state the rule for the other Circuits in terms of their requiring at least one absolute statement of "I will not", is not supported by the cases cited as they do not indicate any such analysis was made in them or any such rule yielded by them. Certainly nothing in Witherspoon would require that special level of, content of, or prerequisite to, proof, although where such a response appears, it obviously makes a finding of juror inappropriateness easier. Parenthetically, however, as respondents read one of Mr. Dent's later answers, it was "I could not" when asked the relevant question (App 118(a)). For the reasons above, a writ of certiorari should not be granted on this issue.

IV

PETITIONER'S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL IS SUBSTANTIVELY INCORRECT AND DOES NOT INVOLVE THE SAME THINGS AS WASHINGTON V. STRICKLAND, 693 F.2d 1243 (11th Cir. 1982) AND THEREFORE THE CRITERIA FOR SEEKING REVIEW ON WHICH SHE RELIES - AN IMPENDING, RELEVANT EXPLICATION OF THE LAW OF INEFFECTIVE ASSISTANCE OF COUNSEL - IS INAPPLICABLE HERE.

Petitioner finally seeks a writ of certiorari on the issue of ineffective assistance of counsel claiming her lawyer, Bob Jacobson, mishandled her psychiatric defense and failed to investigate a "prior good character" type of defense. Neither of these represents a substantial charge against counsel and the first is so weak that it has to be

beefed up by epithitical language e.g. counsel's activities being a "flurry" and counsel having "never understood" this or that, while the second omits the salient (and to respondents, conclusive) fact that petitioner participated in the decision to limit the mitigation evidence to her drug abuse and personality problems. Under these circumstances, issuance of a writ of certiorari is not justified.

With regard to the first, petitioner had a ten year history of drug abuse and psychiatric treatment and therefore counsel put on five doctors, three pharmacists, petitioner herself and two of her relatives to testify to this. Although the doctors could not say she was legally insane at the time of the crime or trial, counsel had little else to do as the district attorney turned down his offer to plead petitioner guilty in exchange for five consecutive life sentences. His hope from all this evidence was that the jury might have a reasonable doubt on intent to kill and thereby convict petitioner of second degree murder but, if not, it might then find the evidence showed the mitigating circumstances of emotional or mental disturbance, or impaired capacity (PCHT p 219-224).[3] Preparatory to this, Mr. Jacobson cross-examined the state's witnesses along the above lines and expected petitioner's

[3]The post-conviction hearing transcript pages referenced in this argument are attached as an addendum to this brief, utilizing the original page references.

testimony to show remorse and pain as per their rehearsals (PCHT p 106-111, 233, 236-238). She double crossed herself, however, by arguing with the district attorney, admitting to acts at odds with her claim of drug intoxication at the time and even made silent applauding motions at the conclusion of the district attorney's argument. So much for that strategy and one must agree with Mr. Burr, that in one sense, Mr. Jacobson did not understand his client.[4]

The main complaint against Mr. Jacobson is that he did not keep looking after the third psychiatrist gave him a negative report on insanity and, if he had, he might have found Dr. Selwyn Rose 150 miles away, who was then a recent West Coast emigré and often testifies that those facing the death penalty were not insane at the time of the crime. However, those courts considering the argument that counsel has to keep looking have rejected it, see e.g. Bradbury v. Wainwright, 658 F.2d 1032 (11th Cir.), cert. denied, 456 US 992, 73 LEd2d 1288, 102 S.Ct. 2275 (1982); and at petitioner's post-conviction hearing, the bottom line of Dr. Rose's testimony was that he could not say whether or not she was insane at the time (App 64a, 65a). He offered

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[4]The reference to Mr. Jacobson not understanding "the critical importance of having his client talking openly and honestly with her psychiatrist" is a reference to petitioner's refusal to talk to one of them (PCHT p 213-214) and does not square with Mr. Jacobson's testimony (PCHT p 100-101). The allusion to unread medical records is true (PCHT p 229-230) but Mr. Burr has read them and he has never in one of the six stages he has appeared for petitioner pointed to anything in them "which would have lead him to question further the fairness and completeness of the evaluations of Ms. Barfield" Pet. p 31.

only the opinion that she did not have a "clear understanding" of her actions. However, petitioner testified that she knew what she was doing - she was trying to make her victim sick so that he would not have her arrested for her forgeries of his checks. In sum, Mr. Jacobson is being faulted for not pursuing conflicting theories before the jury.

With regard to the second matter above, not developing evidence of petitioner's prior good character ten years before, this was not explored much at post-conviction hearing by petitioner's lawyers. The uncontradicted evidence elicited by Mr. Burr at post-conviction hearing, however, does show that petitioner, her family and Mr. Jacobson jointly decided to limit her mitigating evidence to the problems she had faced during the past ten years and this was after he had interviewed several of the people petitioner relied on at post-conviction hearing (PCHT p 82-84, 120-123, 231-232). Failure to do the same thing was held not to constitute ineffective assistance of counsel in Gray v. Lucas, 677 F.2d 1086 (5th Cir.), cert. denied, US , 76 LEd2d 815, 103 S.Ct. 1886 (1983) and the remoteness of this type of proof in petitioner's case certainly makes the Gray decision on this the expected one.

Finally, the fact that Washington v. Strickland, 693 F.2d 1243 (11th Cir. 1982) is currently before the Court on certiorari sub. nom. Strickland v. Washington, does seem to respondents to require a hold up on this petition. Of four issues reported at 34 CrL 4028 to have been the subject

of this petition, the only one at all related to this case is the issue of what showing of prejudice is required on an ineffective assistance of counsel claim. Strickland's outcome will not affect petitioner's case because both the standards involved in Strickland are higher than that normally employed in the Fourth Circuit and because in petitioner's case, both investigations not undertaken there - psychiatric and "prior good character" - were undertaken although, as previously noted, the latter was dropped with petitioner's consent. Given the foregoing, a writ of certiorari should not be granted to review this issue.

CONCLUSION

None of the four issues raised by petitioner merit this Court's attention under the normal guidelines governing this Honorable Court's decision on whether or not to issue a writ of certiorari, S. Ct. Rule 17. Accordingly, respondents urge the Court to deny same.

This 30 day of April, 1984.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing has been mailed postage prepaid and addressed as follows to:

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This 30th day of April, 1984.

Richard N. League
Special Deputy Attorney Genereral

ADDENDUM A

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER, 1979

NO. A-617

MARGIE VELMA BARFIELD,

Petitioner,

v.

STATE OF NORTH CAROLINA,

Respondent.

RESPONSE OF STATE OF NORTH CAROLINA IN OPPOSITION TO PETITION FOR CERTIORARI.

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COUNSEL FOR RESPONDENT

May 2, 1980

The defendant, in her petition, twice accuses the North Carolina Supreme Court of failing to give a fair review "in its rush to issue its first affirmance of a death sentence under the current North Carolina death penalty statute." (Petition p. 9). In rebuttal of this accusation, the State shows that of the five death sentence cases reviewed so far by the North Carolina Supreme Court, four have been set aside for errors committed in the sentencing phase. The cases of GOODMAN, supra, JOHNSON, supra, and CHERRY, supra, preceded this case and the case of STATE v. DETTER, 298 NC 604, 260 SE 2d 567 (1979), followed this case. Only the case at hand has been found to be error-free. Such a record shows how careful and meticulous the North Carolina Supreme Court has been in discharging its review function. The accusation cannot withstand the truth which appears from the record.

In summary of the State's brief defense to the defendant's attack on the three aggravation issues, the State contends that (1) there are adequate, independent facts to support each issue, (2) prior North Carolina cases have adopted interpretations that add proper guidance to the general issue of "especially heinous, atrocious or cruel" which interpretation has been approved by this court in PROFITT, supra, (3) the trial judge instructed the jury in keeping with the interpretations, (4) the jury answered written issues of aggravation and mitigation, (5) the jury answered all three aggravation issues against the defendant and found no mitigation, (6) aggravation as found outweighed mitigation in which instance the jury had no discretion to impose a life sentence, (7) and the defendant exercised her automatic right of appeal to the North Carolina Supreme Court as to errors of law and propriety of punishment which court properly exercised its powers. The defendant has been condemned to death in accordance with constitutional procedures.

B. WAS THE CONSTITUTIONAL PROCESS RESPECTING CHALLENGE FOR CAUSE FOR OPPOSITION TO THE DEATH PENALTY, AS SPECIFIED BY THE WITHERSPOON DOCTRINE, FOLLOWED DURING SELECTION OF THE PETIT JURY?

GS 15A-1212 sets forth the various grounds for challenge for cause of a prospective juror. The statute, in part, reads as follows:

> "A challenge for cause to an individual juror may be made by any party on the ground that the juror:
>
> (a) As a matter of conscience, regardless of the facts and circumstances, would be unable to render a verdict with respect to the charge in accordance with the law of North Carolina."

The WITHERSPOON rule, as enumerated in WITHERSPOON v. ILLINOIS, 391 US 510, 20 L.ed. 2d 776, 88 S.Ct. 1770 (1968) and supplemented in such cases as DAVIS v. GEORGIA, 429 US 122, 50 L.ed. 2d 339, 97 S.Ct. 399 (1976), specified that where a death sentence has been imposed it cannot stand if the veniremen have been improperly challenged for cause based upon a belief concerning the death penalty. The rule as to the propriety of challenge is stated in DAVIS, at page 123, with this language:

> "...Unless a veniremman is irrevocably committed, before the trial has begun, to vote against the penalty of death regardless of the facts and circumstances that might emerge in the course of the proceedings (citation omitted) he cannot be excluded: if a venireman is improperly excluded even though not so committed, any subsequently imposed death penalty cannot stand."

The North Carolina statute is basically a modification of the WITHERSPOON rule and is routinely followed in North Carolina. Indeed, in this case, prior to jury selection, the trial judge announced that he would follow the WITHERSPOON rule (Rp 71).

Veniremman Dent was successfully challenged for cause by the State as a result of his belief concerning the death penalty. A somewhat extended inquiry was made into his beliefs by the District Attorney, defense counsel, and the trial judge with these results: he believed he could sentence to death in some cases (one time; Rp 85); could impose death in worst case (two times; Rp 88); it would be hard to do (two times; Rp 85); doen't know (six times; Rpp 85, 86, 87, 88); doesn't believe he could vote on death (five times; Rpp 84, 85, 90); doesn't believe in death penalty (six times; Rpp 85, 89, 90); doesn't believe he could under any circumstances (one time; Rp 85);

doesn't believe he could return a verdict of death (two times; Rpp 85, 86); could not sit (one time; Rp 86); under no circumstances (one time; Rp 86).

During first questioning by the District Attorney, Venireman Dent said that under no circumstances could he sit on a death case. Hence he was challenged for cause. However, upon questioning by the trial judge he said he didn't know and upon questioning by defense counsel said he could, so the challenge was denied (Rp 89).

Upon reexamination by the District Attorney, Venireman Dent said he couldn't impose the death penalty; hence he was again challenged for cause. This time, upon examination by the trial judge, he said "I don't believe I could" and the challenge was allowed (Rp 90).

Granted, Venireman Dent inconsistently answered questions about and the relative strength of his belief; however, overall the clear impression is that he opposed the death penalty with sufficient conviction that he could not sit and render a death sentence in any case. When a venireman has answered questions concerning his fitness inconsistently on 26 occasions, it is suitable for the trial judge to exercise the wisdom of his insight. Having just said "I couldn't," the answer "I dont believe I could" to the judge's question is subject to an interpretation to mean "I couldn't."

In addition to the current case, North Carolina has permitted overall interpretation of the venireman's belief in other cases. STATE v. BERNARD, 288 NC 321, 218 SE 2d 327 (1975); STATE v. SIMMONS, 286 NC 681, 213 SE 2d 280 (1975); STATE v. AVERY, 286 NC 459, 212 SE 2d 142 (1975), death sentence vacated 428 US 904, 96 S.Ct. 3209, 49 L.ed. 2d 1209 (1976). Other states have concurred. In TEZENO v. STATE, 484 SW 2d 374 (Tex. 1972), the Texas court wrote:

> "We cannot believe that WITHERSPOON...requires certain formal answers and none others. We surely feel that the test of WITHERSPOON is 'not to be applied with the hypertechnical and archaic approach of a 19th century pleading book, but with realism and rationality....'"

The State contends that the WITHERSPOON doctrine as updated and modified was applied in the current case and that Venireman Dent was properly challenged for cause as found by the North Carolina Supreme Court.

CONCLUSION

The State contends that the Federal questions presented in the Petition for Writ of Certiorari had been previously determined by this court and that the decision in this case by the North Carolina courts has been in accord with applicable decisions of this court. Accordingly, the State respectfully says that the Petition for Writ of Certiorari should be denied.

Respectfully submitted, this the 2nd day of May, 1980.

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ADDENDUM B

COURT: OVERRULED. You may answer if you understand the question.

A. The only problem that I can think of occurred after the case was tried and not before.

Q. In the course of preparing the defense for Mrs. Barfield, you talked to a number of witnesses. Is that correct?

A. Yes sir, I did.

Q. Can you tell me the witnesses aside from the psychiatrists that you talked to in preparation for the trial?

A. I talked to many of her family members.

Q. Can you tell me who?

A. It would be at least three of the four seated on the front bench. Her daughter and her son-in-law, her brother Earl Matthews, her son Ronald Burke, all the doctors that were called as witnesses. Mrs. Hayes from Belk's who is now the Parole Officer or Probation Officer or--I guess she works for the prison system. I talked with a lady who was involved in the church and her husband who was the minister or pastor of that church. They had moved out of town. I believe I talked to some people over at United Care which is now Modern Care.

Q. Do you recall who you talked to there?

A. I don't remember the names right now. I think one of them was named Burchette, Barbara Burkette, or something like that. I know that I was looking for witnesses and I think they had told me that they didn't know her long enough. I think they

were people in the nature of character witnesses. Now, there is one name that has me a little puzzled. I think I talked with Mr. Geddie who worked at Belk's. I know I issued a subpoena for him, I know I had a telephone number for him, but I know that he didn't testify. So something makes me think that I may have talked to him and decided not to call him but I have no independent recollection of that right now.

Q Was that subpoena for Mr. Geddie issued on November 24, a Friday before the trial started on Monday?

A I do not remember when it was issued. Whatever the file says that is probably correct.

Q Is there anyone else that you talked to?

A Well, there may have been but I just don't recall right now. Of course, I talked to the defendant a number of times.

Q Would it be indicated in your file if you talked to anybody, would you have made notes of it? People that you talked to?

A It would not be indicated by list or notes, no, I don't think so.

Q Would their names be in your file that you talked to them?

A I think primarily it's limited to the ones I told you about.

Q That would be Mrs. Hayes, the minister and his wife, and Mrs. Burchette ---

A The minister and his wife would be Sylvia Long and I don't

remember her husband's name.

Q. Reverend and Mrs. Long, Mrs. Burchette and possibly ---

A. Possibly somebody else.

Q. Possibly Mr. Geddie?

A. No, possibly somebody else at United Care whose name I don't recall right now. Possibly Mr. Geddie.

Q. And then you mentioned members of the family that you said was seated on the front row ---

A. Right back of you, right, right now. I talked with Gwen Bullard who I did not mention to you who is a sister-in-law, I believe, of Mrs. Barfield. I talked to her in my office alone probably a number of times. I believe she resides in South Carolina somewhere.

Q. Did you talk to ---

A. I also went up to the Chief Medical Examiner's office up in Chapel Hill and talked to some people up there. I talked to a number of pharmacists about the effects of drugs and I think I called a number of them as witnesses, and I may have talked to some that I didn't call as witnesses.

Q. You called pharmacists from Chapel Hill?

A. No,these are pharmacists around Lumberton.

Q. Pharmacists that Mrs. Barfield had gotten prescriptions from?

A. Yes.

Q. Are there any other witnesses that you can think of that

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Velma Barfield?

A. I do not have any indication on my time slips that I spoke to her in the next couple of days although I may have. I don't vouch for the complete accuracy of the time statement.

Q. Let me ask you this, Mr. Jacobson, do you recall when she was sent to Dorothea Dix?

A. Somewhere around the 16th or 17th of March.

COURT: Would you repeat that date, please? I didn't hear you.

A. Somewhere around the 16th or 17th of March of 1978.

Q. Did you see her from the day that you were appointed there in Court until the time that she left to go to Dorothea Dix a day or two later?

A. I may have but I don't have any independent recollection. There is nothing in the time sheet that would refresh my recollection.

Q. Did you then see her at Dorothea Dix?

A. I spoke to her on the phone before I saw her at Dorothea Dix. I've got a notation here on the 4th of April I talked with her, and then again when I went to Raleigh on the 21st I did see her up at Dorothea Dix.

Q. Do you recall the substance of your conversation with her on the 4th of April?

A. I think generally it was a conversation about how she was getting along and I was instructing her to cooperate with the

doct and do the best she could under the circumstances.

Q. Now, on the 21st of April you've indicated that you saw her at Dorothea Dix. Is that correct?

A. Yes, I think so.

Q. Do you recall how long you spoke to her at that time?

A. It wasn't very long I don't think. It couldn't have been over fifteen minutes to half an hour. It may have been less. I did most of my talking with Dr. Rollins.

Q. Now, do you recall the substance of your conversations with her on the 21st of April?

MR. BRITT: OBJECT.

COURT: OVERRULED.

A. No, I do not. Again, probably it was about how she was doing and how they were treating her up there at Dorothea Dix, and again encouraging her to cooperate with the doctor.

Q. Do you recall the next time that you saw her?

A. Yes, it was on May the 1st. It was a trip to the jail and conference with the defendant.

Q. Do you recall the substance of that conversation?

MR. BRITT: OBJECT.

COURT: OVERRULED.

A. The conference that we had probably was in relationship to the up-coming arraignment and what was going to happen at the arraignment and what motions we were going to file and what we were going to do with regard to changing the venue of the

we did.

Q Is there any day prior to trial that you can talk, that you know of that you specifically talked to her about testifying?

A I cannot specifically pinpoint a day when I said, Mrs. Barfield, I've decided that you are going to testify.

Q Is there a day that you can specify, or days, that you can specify and say that you discussed with her the facts of her testifying and what her testimony would be?

A We did on a number of occasions discuss and practice what her testimony was going to be and these were the days that I saw her which were pretty much close to when the trial was going to be.

Q So that would have been later than October 20th?

A I'd say October 20th was a good starting date and I think from that date on we probably started practicing.

Q When was the next time that you saw Mrs. Barfield after October 20th?

A I have down here a conference of November 6, 1978 but I don't have anything beside of it. That may have been the next time I saw her. It doesn't specifically set out conference with whom and I would just, assuming that is when, that was the time I may have gone over to the jail to see her. On November 15th I do have a conference with the defendant. On November 16th I do have conference with the defendant, and on

November 18th I have interview with defendant. On November 22 I have interview with defendant, and starting about there just about every day I spent time over at the jail.

Q For what purpose?

A To prepare her for testifying and to give her information about how the trial was going to be conducted.

Q Could you relate those conversations to the Court?

A I think we were practicing her testimony.

Q How did you do that?

A By going over it and asking questions and she would answer them.

Q What kinds of questions?

A The same ones I put to her in the Trial Transcript basically.

Q Did you find it necessary to go over the same question at different times in order to assure yourself that she would be a good witness?

MR. BRITT: OBJECT to the form. Well, OBJECT to it altogether.

COURT: OVERRULED.

A I counseled her on trying to be, and appear to be, a sympathetic witness. I wanted her to look like somebody's mother. Here was this poor lady and look what she was going through and I wanted her to evoke sympathy, and I counseled her about the manner in which she testified and that she could very much help herself in this regard in the manner that she testified

and very frankly, I was afraid that she was going to get in an argument with Joe Freeman Britt and look very very bad. My fears came to pass, and she did. I talked to her many times immediately prior to the trial and during the trial that when she testified I wanted her to cry. I thought that would be very helpful and I thought that would get a great deal of sympathy, and at no time did she do that. In fact, she just seemed to stick her chin out and just wanted to go at it with the District Attorney and I was very disappointed but that is not to say that I didn't counsel her on how to testify. I wanted her to cry very much, and she did not.

Q What was there about her that made you think that she and Joe Freeman Britt would go at it, as you say?

A Because every time that we got together, she wanted to argue with me about the cause of death of all the decedents. She was not satisfied in her mind that the arsenic had caused the death and we ourselves would argue about it, and I was afraid that she was going to do that, and that is what she did. She would get a little bit argumentative.

Q And this argument about the cause of death, does that relate to Stewart Taylor or the others also?

A All of them.

Q Did you know at the time that you were talking to her about testifying that the other deaths would be admitted or that Mr. Britt would seek to admit them?

A I knew that he was going to try, yes. I was familiar with all the cases that say they can be used to show intent, motive scheme, plan, design, et cetera, modus operandi.

Q So it was,---Strike that. When you talked to her about testifying, did you talk to her about the other deaths also?

A Yes. I secured copies of all of her statements which told of all the deaths. I secured copies of all the death certificates. The only thing I couldn't get was the medical examiner's reports. There is something peculiar about the law that he couldn't let those other deaths, those reports out without a Court Order, and there was no charges in those cases. So I wasn't able to get the Order.

Q When you say he couldn't release them, who are you talking about?

A Page Hudson.

Q Now, did you talk to Mrs. Barfield during this period before trial about the potential cross examination?

A Yes.

Q Can you tell me what you did in that regard?

A I told her that Joe Freeman was going to try and make her look real bad and she was going to have to be in control of herself.

Q Did you tell her anything else in that regard?

A Well, I think I discussed that she was going to be asked about all of the deaths and how she administered the poison

and that sort of thing. Basically I wanted her to be able to tell about her drug habit. That was the purpose in practicing so that she would be ready not only for my examination but for Mr. Britt's cross examination. And I do that not only with her but will all of my contested cases.

Q After all of your conversations with her, up until the time that you had put her on trial, until you put her on the Stand or until she took the Stand to testify, did you continue to feel that there was a danger that she and Joe Freeman Britt quote, would go at it?

A Yes, I felt that way and that was why we had our conferences so I could prepare her for it and ask her to look sympathetic.

Q What was the purpose in putting her or having her testify? Could you tell me your purposes in having her testify?

A To show that she took all of these drugs and that she was more or less a poor person, a person that did not come from a real rich family but kind of had to struggle to get by and that she had seen many many doctors and she had a problem with the doctors over prescribing the various drugs and that she took them against their wishes and against their prescriptions and in combination.

Q After her direct testimony on the Stand, were you satisfied in your own mind that you had elicited that information that you sought to get from her?

A 'sing her and the doctors I felt like we had done pretty

well about getting that sort of information in the record especially when the Court admitted into evidence all those pill bottles. I was very satisfied with that.

Q When had Ronald Burke gotten you those pill bottles?

A Very early in the case. He had a grocery sack, he brought in a grocery sack full of them, and it may have been forty or fifty pill bottles.

Q During the time of trial, I believe the trial started on Monday, is that right?

A Yes.

Q And ended on a Saturday?

A Saturday at eight o'clock.

Q Did you have conversations with Mrs. Barfield outside the Courtroom concerning the trial?

A Yes sir.

Q And starting with Monday, can you relate those to me?

A I cannot relate all of them to you. I know that we did have conversations during the breaks and before the trial.

Q Was there anything in the conversations that you had with her relating to the witnesses that were about to be called?

A I don't remember. On the breaks and before trial I did spend a good bit of my time trying to line people up to be where they were supposed to be. Also the first several days were taken up with jury selection. So I don't know if we would have had much conversation about the case in chief on

MR. BRITT: OBJECT for the same reason.

COURT: SUSTAINED.

Q Did you consider using any of her brothers and sisters in the sentencing phase?

MR. BRITT: OBJECT.

COURT: OVERRULED.

A I believe I used Earl Matthews. I don't remember whether I used him on sentencing or on guilt or innocence. I believe I used him on guilt or innocence.

Q This is her son-in-law?

A No. I'm not quite sure how Earl is related. Earl is related but he is the one that I used. A lot of the family members didn't want to testify.

Q Who is that, which ones didn't want to testify?

A Well, I had asked Ronald and Kim to help me get family members who wanted to help out on this and they said the family wasn't really interested because she had killed their mother. Now, whether I can point the finger at one in particular, I cannot do that and I wouldn't want to really.

Q Did you yourself talk to any of Velma's brothers and sisters about testifying?

A I know I talked to her brothers and sisters but I don't know whether I talked to them about testifying. I talked to Jesse and I talked to Tyrone, I believe, and, of course, I. talked to Earl Matthews. I am not sure how Earl is related.

Q Did you talk to Jesse and Tyrone in terms of explaining the case to them or in what context did you talk to them?

A I don't remember.

Q Do you know anything about,at the time of the trial, did you know anything about Velma Barfield prior to the time that her first husband was an alcoholic and she began using drugs as she testified to?

A I don't know that I knew that much about anything prior to her first husband.

Q Do you know if you talked to her daughter and son, Kim and Ronald, about what she was like before she started using drugs?

MR. BRITT: OBJECT.

COURT: SUSTAINED.

MR. LITTLE: Your Honor, may I be heard briefly?

COURT: Can you re-phrase the question?

MR. LITTLE: Yes sir.

Q Did you talk to Ronnie and Kim about Velma Barfield's background prior to approximately 1968?

MR. BRITT: OBJECT.

COURT: OVERRULED.

A We talked primarily about her situation since the death of her first husband because that was when all of her problems began, and I was advised that that was when all her problems began, that she was a pretty good person before that

but everything seemed to go downhill from that time.
Q Did you talk to any of Velma Barfield's brothers and sisters about her background prior to approximately the time when her first husband died?
A I don't believe I did.
Q Did you talk to any of the people that knew Velma Barfield during the period that she lived in Parkton?
MR. BRITT: OBJECT without some sort of predicate.
COURT: Re-phrase it.
Q Did you talk to any of the people who lived in the Parkton area about Velma Barfield ---Your Honor, I've lost myself on that one. Did you talk to any of the people in Parkton that knew Velma Barfield about her?
MR. BRITT: OBJECT.
Q About her background.
COURT: With reference to what? Please start your whole question again so we can comprehend it.
Q First of all, did you talk to anybody in Parkton about Velma Barfield?
MR. BRITT: OBJECT. To broad.
COURT: OVERRULED. What is your answer?
A I don't know that I did. I may have but I don't believe I did.
Q Do you know what Velma Barfield's employment record was from approximately 1957 to the time of her arrest in 1978?

MR. BRITT: OBJECT from 1957.

COURT: OVERRULED. He may answer if he knows.

A. I believe I know her employment record from '68 on.

Q. And what is that?

A. I know she worked at Belk's and I know she worked at United Care and I know she worked as a household keeper for various people taking care of elderly people. I can't put it in sequence for you but she did basically day labor.

COURT: Excuse me, sir, what is United Care?

A. It is a nursing home that is now called Modern Care located out near K-Mart, behind the K-Mart building.

Q. Mr. Jacobson, I'd like to ask you about your motion that you filed on March 14, 1978. I'll show you what has been marked for identification as defendant's five and ask if you can identify that?

A. Yes sir.

Q. What is it?

A. It is a motion to have the defendant evaluated.

Q. Now, was this made, this is a record in the trial of Margie Velma Barfield, is that right?

A. Yes.

Q. Now, did you ask for any relief from Dorothea Dix other than that which is set out in this motion?

MR. BRITT: Well, OBJECT to the question.

COURT: If you understand it, OVERRULED, you may answer

it already bears defendant's exhibit number 27 identifying number; the remaining paper still under the same staple are handed back to Mr. Little who hands them back to the Clerk in the presence of the defendant.

Q. Mr. Jacobson, I ask you if you can identify Defendant's exhibit number 27?

A. Yes.

Q. Is that the report that you said that Dr. Rollins furnished you concerning Velma Barfield?

A. Yes sir.

Q. Did you receive any other written information from Dorothea Dix or Dr. Rollins concerning Velma Barfield?

A. I don't believe so.

Q. Did you request anything other than that, what you have in your hand?

A. I talked to him on several occasions. I don't think I requested anything further in writing.

Q. Did you see any, look at any charts of Mrs. Barfield or reports of any other persons relating to her while you were at Dorothea Dix?

A. I don't think I did. No, I did not.

Q. Can you tell us what your basic conversation was with Dr. Rollins at the time that you went to see him when Velma Barfield was at Dorothea Dix?

A. Yes, Dr. Rollins felt like the patient was being uncoopera-

tive, that there was nothing that could explain her condition, her lack of memory except that she was doing it willfully and he says I've got nothing for you. He says, "If you can get her to cooperate with me, perhaps there might be something I can do for you." but he said that he was having a problem, and I spoke to her about this and it was for this reason that he recommended another psychiatrist talk to her, that they were just having a problem with communicating, and that he didn't feel like she was coming across as well as she ought to.

Q Do you know what day you talked to Dr. Rollins, do you know what day that was?

A On the 21st day of April, 1978.

Q And do you know when she was returned from Dorothea Dix?

A I know that I had a telephone conversation with regard to her return from Dorothea Dix on April the 25th. I don't know if that was the exact date she returned or not.

Q Is the date of discharge reflected in the exhibits you have?

A No, it says date of admission March 15, date of conference April 21, date of discharge blank. There is nothing there.

Q Okay, now, was it your intention,---Strike that. You asked Dr. Rollins to testify at trial, is that correct?

A Yes sir, I did.

Q Were you aware as to the results of any testing done on

MR. BRITT: OBJECT.

COURT: OVERRULED.

A What do you mean?

MR. BRITT: Well, I OBJECT to all that.

COURT: OVERRULED.

Q Were you informed at Dorothea Dix by Dr. Rollins or any of his associates of the physical condition of Velma Barfield during the period that she was at Dorothea Dix?

MR. BRITT: OBJECT.

COURT: In the discretion of the Court, OVERRULED. What is your answer?

A I may have been advised not necessarily by Dr. Rollins but by Mrs. Barfield that she was having some trouble sleeping.

MR. BRITT: MOVE TO STRIKE.

COURT: DENIED.

Q What was your purpose in using Dr. Rollins as a witness at trial?

A I thought perhaps using all three psychiatrists and some members of the family that I might be able to introduce a psychiatric defense. Ultimately it worked out that the Court would not consider it and would not submit it to the jury, but as a secondary purpose, and I don't mean to imply that it is any less important, I wanted to offer Dr. Rollins and the other psychiatrists in mitigation and extenuation.

Q Did you talk to Dr. Rollins about him testifying in mitigation and for Velma Barfield?

A I talked to Dr. Rollins about him testifying and I wanted him to relate everything he could about the patient.

Q Did you talk to him specifically about him testifying in the sentencing phase of the case?

A I don't believe I differentiated between the guilt or innocence phase and the sentencing phase. I know I talked to him about testifying, period.

Q Now, did Dr. Rollins tell you that in his opinion she was, she knew the difference between right and wrong at the time the crime was committed?

A He told me that.

Q Did he tell you that in his opinion she was ready, competent to stand trial?

A He told me that.

Q You entered a plea of not guilty by reason of insanity in this case, did you not?

A I entered a plea of not guilty and not guilty by reason of insanity. I think that is the way you are supposed to make the plea in that situation.

Q And did you consider,---Did you ask Dr. Rollins to testify in the sentencing phase?

A I asked him to testify.

Q In the sentencing phase?

A I asked him to testify at the trial.

Q Did you ask him to testify as to any particular phase?

MR. BRITT: OBJECT.

COURT: OVERRULED.

A Even though we had a bi-furcated trial, a two-part trial, the first part can be considered in the second part, and I knew this and it didn't really matter where he testified, that it was going to be considered. So I asked him to testify.

Q Now, you asked Dr. Sainz to testify also, did you not?

A Yes, I did.

Q Did you have any discussions with Dr. Sainz prior to the trial concerning Velma Barfield?

A Yes, I had several.

Q Did you have conversations with him concerning Dr. Sainz testifying as to her knowing right from wrong at the time of the offense?

A He had told me that she knew right from wrong and that under the legal definition of insanity she was not insane.

Q Did he tell you that he did not believe in insanity?

MR. BRITT: OBJECT.

COURT: OVERRULED.

A Well, it's hard to remember at this late date but ---

MR. BRITT: OBJECT. The transcript speaks for itself, Your Honor.

COURT: OVERRULED.

A He may have and he may not have; I don't recall.

Q Now, what was your purpose in using him in the guilt phase?

A Again, I'd have to give you the same answer as I gave you before. I knew that all three of the psychiatrists were going to say that she did not meet the legal test of insanity and that she was competent to stand trial but from their testimony I felt like perhaps by some chance I could develop a psychiatric defense; at least I hoped I could. I did want them to testify as to her use of prescription drugs. In each of the reports, Mrs. Barfield had told at least Dr. Rollins and Dr. Douglas that she didn't mean to kill Stewart Taylor, I wanted this to come out, and it did come out. The purpose of that would be to have the jury convinced that she committed a second degree rather than a first degree murder and then lastly I wanted all of their testimony to be considered on mitigation and extenuation should she be convicted of first degree murder.

Q Now, Dr. Douglas also testified, did he not?

A Yes, he did.

Q Did he tell you prior to trial that he believed that she knew the difference between right and wrong at the time of the offense?

A Yes, he did.

Q And did he tell you that he thought she was competent to stand trial?

A He told me that she was as sane as, he said, "She is as sane as you and I." I don't know if that is any test or not but that is what he told me.

Q What did Dr. Rollins or Dr. Douglas or Dr. Sainz, all three, tell you prior to trial that led you to believe you could establish a defense of insanity in this case?

MR. BRITT: OBJECT to form.

COURT: OVERRULED.

A My purpose was to show that each had diagnosed her as having some sort of mental illness. They placed a label on her condition. Even though each of them had said that in their opinion she knew the difference between right and wrong and that she was capable of standing trial, I thought perhaps through their testimony that she did have some problems psychiatric in nature that I could use those in combination to build a psychiatric defense. Considering her drug abuse and considering her treatment in the past by psychiatrists I seriously thought that I would be remiss in not introducing testimony from all three of them.

Q Did you,---Why did you use all three of them in the guilt phase as opposed to the sentencing phase?

A Because everyone of them except Dr. Sainz had said that she told them, "I didn't mean to kill him" and this would corroborate her confession that she didn't mean to kill Stewart Taylor thereby perhaps reducing the crime from first degree

to second degree murder. That was a very important part of having them testify on the guilt or innocence phase of the trial.

Q Is there a reason that you did not put them on for the limited purpose during the guilt phase of establishing what Mrs. Barfield had told them about her intent and using the rest of their testimony in the sentencing phase?

MR. BRITT: OBJECT.

COURT: In the discretion of the Court, OVERRULED.

A Under the bi-furcated trial system that we had, the matters considered in the, or testified to in the guilt or innocence phase are considered in the sentencing portion and I tried to get everything I could out of them knowing that it would be considered. I saw no purpose in dragging it out and having them testify on two different occasions. It hard enough getting them to trial at one time,much less two.

Q Was Mrs. Barfield on medication at the time of trial?

MR. BRITT: OBJECT. Medical conclusion on his part.

COURT: If he has absolute knowledge he can give an absolute answer. OVERRULED.

A She may have been ---

MR. BRITT: OBJECT AND MOVE TO STRIKE.

COURT: SUSTAINED as phrased both by question and answer.

MR. BRITT: MOVE TO STRIKE.

in the penalty phase, what did you, what was your intention?

MR. BRITT: OBJECT.

COURT: Have you finished your question?

MR. LITTLE: No sir, I am in the middle of it. I decided you were going to sustain the objection and I was just trying to re-word it.

COURT: Go to a new question.

MR. LITTLE: Yes sir.

Q Mr. Jacobson, in the sentencing phase, were there any witnesses that you intended to call other than those that were called?

MR. BRITT: OBJECT.

COURT: OVERRULED.

A Those were the witnesses that I intended to call that I did call.

Q Mr. Jacobson, why didn't you call any witnesses that grew up with Velma Barfield in the Parkton area?

MR. BRITT: Well, I OBJECT.

COURT: SUSTAINED.

Q Were you aware of any witnesses that knew Velma Barfield that could testify as to her background prior to the time that she used drugs?

MR. BRITT: OBJECT.

COURT: OVERRULED.

A I had gotten together with the family and we had made the

decision, and it was my decision with their consent, with the defendant's consent, that we would concentrate on her drug abuse and present the case in a fashion to show that she was all right up until the time her first husband died and that from there it was downhill. There was never a suggestion to me and it was never my intention to go 'way, 'way 'way back and get people in the Parkton area, and this decision was made by me with her consent.

Q Do you know when she moved from Parkton?

MR. BRITT: OBJECT.

COURT: OVERRULED.

A I really have no idea. I know she moved around from there to Fayetteville and may have been in Columbus County but I can't recall at this time exactly what dates she moved from where.

Q Did you consider, were you aware,---Strike that. Did you talk to anyone in the jail here in Robeson County about testifying for Velma Barfield in the sentencing phase?

A I may have.

Q Who is that?

MR. BRITT: Well, OBJECT.

COURT: In the discretion of the Court, OVERRULED.

A Well, the subject was not brought up by me to people in the jail, it was brought up to me by the people in the jail. They are the ones who came to me and said that she had been

talking to them about testifying and they said considering their position and everything they didn't think it would be appropriate and I agreed.

Q Who was that that said that to you?

A I believe it was Austin George.

Q Anybody else?

A There was a matron over there and I don't recall her name at that time. I don't know that she talked to me about it or not. I think the conversations I had were with Austin George.

Q What kind of image were you trying to portray of Velma Barfield to the jury in the sentencing phase?

A A sympathetic motherly image. That was throughout the trial, and I believe I failed.

MR. LITTLE: Your Honor, I think we are through. Let me make sure.

COURT: I'll give you time to confer there.

(Mr. Little and Mr. Burr confer)

MR. LITTLE: Your Honor, we have no further questions at this time. Thank you, Mr. Jacobson.

COURT: Very well, it is now lunch time. Let cross examination begin after lunch. We will come back today at 2:15. Take a recess until then, Mr. Sheriff.

(The Court takes a lunch recess until Tuesday Afternoon, November 18, 1980, at 2:15 P.M. Upon the re-convening of Court, the following proceedings are held,)

that correct?

A Yes, on April 11, 1979. It's got the file stamp on it.

Q Now, Mr. Jacobson, during the direct examination, you made the statement that you couldn't enter a guilty plea in a first degree case. Would you explain what you meant by that, please?

A I think that I said that in frustration more than anything. I think that what I mean that I wouldn't consider entering one in this case and I had no intentions of entering one because she said ---

MR. LITTLE: OBJECTION.

COURT: OVERRULED.

A She said she didn't mean to do it.

Q All right. Had you been in a position to enter a guilty plea, would that, would you by a guilty plea have been able to escape exposure to a death verdict?

A No sir.

Q You also indicated on direct examination that you attempted to portray the defendant as a sympathetic motherly person but that this was unsuccessful. Those may not be your exact words but your testimony was in that vein. What did you mean by that? Why do you say that it was unsuccessful?

A Well, I indicated on direct examination that I failed; I should have said the attempt failed. What I meant was that I counseled her on many occasions to give the appearance of

being sympathetic and motherly and to cry if she could and to elicit the jury's sympathy, and she would not do it or did not do it. She, on cross examination, she got into a fight with the District Attorney and started arguing and several times she got called down from the bench for arguing and the Court asked her just to answer the question and at the end of the District Attorney's argument ---

Q You are talking about jury argument, now?

A The jury argument. I think it was on the case in chief. It was brought to my attention that she had applauded the District Attorney's argument, that she had raised her hands up and simulated a clap without actually making any noise, but in my opinion making a spectacle of herself and I repremanded her severely for this.

Q What was her general demeanor on the Stand when you had her on direct examination? Did she appear to be a sympathetic person or otherwise?

A Well, she was, she came across more on cross examination as being somebody who wanted to argue rather than somebody that wanted sympathy. She was not on direct so sympathetic as to want to say, well, gee, I'm sorry for what I've done and I want forgiveness, this sort of thing. She didn't give that impression. Like I say, I tried to encourage her to appear sympathetic, to get sumpathy from the jury, I wanted. the jury to think of the defendant like they would think of

their own mother.

Q Did she ever at any time during the course of the trial, either in phase one or phase two, demonstrate any remorse or contrition for the crimes that she was accused of?

MR. LITTLE: OBJECTION.

COURT: SUSTAINED as phrased.

Q All right, sir. Did she cry at any time?

A No sir.

Q Did she display remorse at any time?

A No sir.

MR. LITTLE: OBJECTION.

COURT: SUSTAINED.

MR. LITTLE: MOVE TO STRIKE.

COURT: ALLOWED.

MR. BRITT: Your witness. Take the witness.

COURT: Any re-direct?

MR. LITTLE: Yes, Your Honor.

RE-DIRECT EXAMINATION BY MR. LITTLE:

Q Mr. Jacobson, you say that you didn't enter a guilty plea because she didn't want to, is that what you said?

A It was her feeling that she had not intended to do this and therefore we had a good shot at second degree. Yes, she probably would have entered a plea of guilty pursuant to a plea bargain but that, entering an open plea and pleading guilty pursuant to a plea bargain are two different things,

END OF DOCKET